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Exeter Township*

EXETER TOWNSHIP
Plaintiff,
vs.
JERRY GELEFF, an adult individual, THE
EXETER EXAMINER, an unincorporated
business, THE EXETER
UNDERGROUND, an unincorporated
business, and JERRY GELEFF MEDIA,
Defendants.

: IN THE COURT OF COMMON PLEAS OF
: BERKS COUNTY, PENNSYLVANIA
:
: CIVIL ACTION – LAW
:
: NO. 2022 - 16476
:
: JURY TRIAL DEMANDED

EMERGENCY MOTION FOR PRELIMINARY INJUNCTION

Plaintiff, Exeter Township (the “Plaintiffs”), by and through its undersigned counsel, The Law Office of Tucker R. Hull, LLC, pursuant to Pa. R.C.P. 1531, hereby request an emergency preliminary injunction, and in support thereof aver as follows:

Basis for Injunctive relief

1. Plaintiffs initiated this action contemporaneously herewith by filing a Complaint (“Complaint”).
2. Plaintiffs suffer harm as set forth more fully in the Complaint.¹

Introduction

3. The Township of Exeter is a Pennsylvania political subdivision of the Second Class with offices located at 4975 Demoss Road, Reading, Berks County, Pennsylvania 19606.

¹ The Complaint is incorporated herein by reference as if fully set forth herein.

Motion/Petition for Emergency Relief 22-16476

Berks County Prothonotary Office



4. Jerry Geleff is an adult individual who resides at 106 Michele Drive, Reading, Berks County, Pennsylvania, 19606.

5. Upon information and belief, The Exeter Examiner is an unincorporated business owned and operated by Geleff.

6. Upon information and belief, The Exeter Underground is an unincorporated business owned and operated by Geleff.

7. Upon information and belief, Jerry Geleff Media is an unincorporated business owned and operated by Geleff.

8. Upon information and belief, The Exeter Examiner is an unincorporated business owned and operated by Geleff.

9. By information and belief, Geleff owns or operated various unincorporated businesses, including The Exeter Examiner, The Exeter Underground, Jerry Geleff Media and Jgmedia.us (collectively, "Businesses").

10. In early 2022, the Township received complaints that one of its Supervisors was allegedly engaged in sexual harassment of female employees.

11. In response to these allegations, the Township, on April 11, 2022, entered into an agreement with the law firm of MacMain, Connell and Leinhauser to serve as special counsel to conduct an investigation into the claims of sexual harassment.

12. On July 27, 2022, Attorney Connell submitted a 43-page report ("Report") to the Township detailing the results of his investigation, including his conclusions and recommendations.

13. The Report is marked "ATTORNEY CLIENT PRIVILEGED."

14. The Report is, in fact, a privileged document/communication.

15. Only the Township has the right to waive the privileged nature of the Report.
16. The Township has not disclosed or otherwise waived the privileged nature of the Report.
17. The Township paid MacMain, Connell and Leinhauser for the Report.
18. Geleff subsequently filed a Right-to-Know Law, 65 P.S. 67.101 *et seq.*, for the Report with the Township, which the Township denied on September 13, 2022 under the attorney-work product doctrine, the attorney-client privilege, a statutory exemption for noncriminal investigative records and the constitutional right to privacy.
19. Geleff appealed the Township's denial of the Report to the Office of Open Records, which docketed the appeal as Jerry Geleff v. Exeter Township, OOR Dkt. AP 2022-2244.
20. The OOR subsequently issued a final order on November 22, 2022 that concluded that the Report is not a public record under 65 P.S. § 67.708(b)(17). See Jerry Geleff v. Exeter Township, OOR Dkt. AP 2022-2244, attached hereto as Exhibit A.
21. As of this writing, Geleff has not filed an appeal of the OOR's decision in Jerry Geleff v. Exeter Township, OOR Dkt. AP 2022-2244.
22. During a broadcast of the Exeter Underground podcast on December 14, 2022, Geleff stated that he was provided with a copy of the Report.
23. Geleff did not identify who provided the Report to him.
24. During the Exeter Underground podcast on December 14, 2022, Geleff stated that he was physically holding three pages of the Report.
25. Geleff then proceeded to read excerpts from the Report during the Exeter Underground podcast.

26. Geleff stated that he would be posting images from the Report on the Exeter Examiner website.

27. At approximately 5 p.m. on December 14, 2022, Geleff posted the following message on The Exeter Examiner Facebook page, "Jerry got ahold of the report and exposed it for Exeter to see. There will be a report in the The Exeter Examiner including screenshots of the copies of the report that Jerry read...." This post is attached hereto as Exhibit B.

28. On December 14, 2022, Geleff posted the content and images of portions of the Report on The Exeter Examiner website at <https://exeterexaminer.us/latest-news/f/exeter-supervisors-harassment-claims-against-hughes-are-false?fbclid=IwAR1RVaTtf4xrwq5vCdnSn7MXhfrytu3MkxC4YeE9VRUYzxjztgzlo9ALfRU>.

Argument

29. In Pennsylvania, a party must establish the following six prerequisites to obtain a preliminary injunction:

- 1) [The] injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages;
- 2) ...[G]reater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings;
- 3) [A] preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct;
- 4) [The] activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits;
- 5) [The] injunction it seeks is reasonably suited to abate the offending activity; and,

- 6) [A] preliminary injunction will not adversely affect the public interest.

Warehime v. Warehime, 860 A.2d 41, 46-47 (Pa. 2004) (internal quotations and citations omitted); *see also All-Pak, Inc. v. Johnston*, 694 A.2d 347, 350 (Pa. Super. Ct. 1997) (the purpose of a preliminary injunction is “the avoidance of irreparable injury or gross injustice until the legality of the challenged action can be determined”).

30. Here, Plaintiffs can ably meet all six of those prerequisites.

The Injunction is Necessary to
Prevent Immediate and Irreparable Harm

31. In the absence of a preliminary injunction, immediate and irreparable harm will continue and increase.

32. The Township commissioned and is the owner of the Report.

33. The value of the Report is \$16,492.00, based on legal fees paid to MacMain, Connell and Leinhauser approved by the Exeter Township Board of Supervisors on August 22, 2022.

34. By information and belief, copies of the Report are located in email account(s) and the physical residence of Geleff at 106 Michele Drive, Reading, PA 19606.

35. Screenshots of the Report are currently located on The Exeter Examiner website at <https://exeterexaminer.us/latest-news/f/exeter-supervisors-harassment-claims-against-hughes-are-false?fbclid=IwAR1RVaTtf4xrwq5vCdnSn7MXhfrytu3MkxC4YeE9VRUYzxjztgzlo9ALfRU>.

36. Geleff is not entitled to and does not have lawful possession of the Report.

37. The report is marked “ATTORNEY-CLIENT PRIVILEGED” and is, in fact, a privileged communication.

38. Only the Township has the right to waive the privileged nature of the report.

39. The Office of Open Records ruled that the report is not a public record.

40. Geleff is making something that is not a public record, the Report, public by posting photos of the Report online for worldwide accessibility and by reading from the Report on a podcast which likewise has worldwide accessibility.

41. Disclosure of the Report causes immediate and irreparable harm.

42. The harm is immediate in that at the moment Geleff posted photos of or read excerpts from the Report, Geleff made a confidential and privileged document publicly available.

43. The harm is irreparable because listeners to the podcast cannot unhear what they have already heard when listening to Geleff read excerpts from the Report.

44. The harm is also irreparable because viewers of the website on which Geleff posted photos of the Report cannot unsee what they have already seen.

Greater Injury Would Result from Refusing the Injunction

45. Greater injury will result to the individual Plaintiffs than will be suffered by Defendant if the requested injunctive relief is denied.

46. If an injunction is not granted, the Plaintiff will be deprived of its personal property rights in the Report of which it is the lawful and sole owner.

47. Further, if the injunction is not granted, a privileged, confidential document of the Township's will continue to be publicly available.

48. By contrast, Defendant will suffer no harm by the grant of an injunction.

49. Defendant is in unlawful possession of the Report, and therefore cannot be harmed by being ordered to return all physical and electronic copies of the Report.

50. Defendant is in unlawful possession of the Report and therefore cannot be harmed by being ordered to destroy all physical or electronic copies of the Report in his possession and descriptions thereof, including but not limited to those on The Exeter Examiner Facebook page, The Exeter Examiner website, and on The Exeter Underground podcast.

The Preliminary Injunction Will
Maintain the Parties in Their Original Places

- 51. Granting an injunction will maintain the status quo.
- 52. The Report is attorney-work product.
- 53. The Report is protected by attorney-client privilege.
- 54. The Report is a noncriminal investitive record.
- 55. The Report is not a public record.
- 56. The Township is the lawful and sole owner of the Report.
- 57. Defendant is not in lawful possession of the Report.
- 58. Granting an injunction will return the Report to the possession of the Township.
- 59. Granting an injunction will remove the Report from the possession of the Defendant.
- 60. Granting an injunction will therefore maintain the status quo.

Plaintiffs Are Likely to Prevail on the Merits

- 61. Plaintiffs' right to relief is clear, and there is a reasonable likelihood of success on the merits, as set forth in more detail in the Complaint.
- 62. Additionally, as Plaintiffs ask that the Order, as written, be followed, Plaintiffs' right to relief is clear, and there is a reasonable likelihood of success on the merits.
- 63. The Township commissioned the Report.
- 64. The Township is the lawful owner of the Report.

65. The Report is personal property of the Township.

66. As its lawful and sole owner, only the Township should be in possession of the Report, copies of the Report, or its contents.

67. Defendant is in unlawful possession of the Report.

68. Therefore, Defendant should return any and all copies of the Report or its contents that are in his possession.

69. Further, Defendant is aware that the OOR ruled that the Report is not a public record.

70. Defendant is aware that the Report is marked "ATTORNEY-CLIENT PRIVILEGED."

71. Despite being aware of these facts, Defendant willfully chose to publicize the report and its contents.

72. Defendant should therefore destroy any and all physical or electronic copies of the Report in his possession and descriptions thereof, including but not limited to on The Exeter Examiner Facebook page, The Exeter Examiner website and on The Exeter Underground podcast.

The Injunction Is Reasonably Suited to the Offending Activity

73. The offending activities here include Defendant being in possession of a copy of the Report; Defendant reading excerpts from the Report on a podcast, which podcast will remain memorialized on the various podcasts apps on which it is available, e.g., Apple Podcasts; and Defendant posting images of the Report to a publicly accessible website.

74. Accordingly, Plaintiff asks that Defendant be ordered to return all physical and electronic copies of the Report.

75. Plaintiff further asks that Defendant be enjoined from reading any further excerpts from the Report on his or any other podcast, and that Defendant remove and destroy any all physical or electronic copies of the Report in his possession and descriptions thereof, including but not limited to those on The Exeter Examiner Facebook page, The Exeter Examiner website, and The Exeter Underground Podcast.

76. The injunctive relief sought suitably fits the actions sought to be enjoined.

The Public Will Not Be Adversely Affected by the Injunction

77. The public will not be adversely affected by the injunction

78. The Office of Open Records determined that the Report is not a public record.

79. The Report is privileged.

80. The Township is the lawful owner of the Report.

81. As a privileged, nonpublic record, the public did not have access to the Report prior to the actions of the Defendant which precipitated the instant Motion.

82. If the injunctive relief here sought is granted, the public will once again not have access to the Report.

83. By taking away something the public would not have had but for the relevant actions of the Defendant, namely access to the Report, the public is not harmed.

WHEREFORE, Petitioners respectfully ask this Honorable Court to enter a Preliminary Injunction:

1. To return any and all physical or electronic copies of the Report in Defendants' possession;

2. Destroy all physical and electronic copies of the Report (and descriptions thereof) in their possession, including but not limited to those on The Exeter Examiner Facebook page, The Exeter Examiner website, and The Exeter Underground podcast;
3. Enjoining Defendants from publishing or otherwise publicly disseminating the Report or the contents thereof;
4. Entering such other relief as this Court deems just and proper.

LAW OFFICE OF TUCKER R. HULL,
LLC

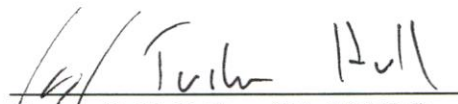


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Counsel for Plaintiffs

Date: December 15, 2022

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial Systems of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.


Tucker R. Hull, Esq. (PA 306426)

BERKS COUNTY
Prothonotary Office

12/15/2022 1:25:29 PM PTCLARRA
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^{NEW} Docket Number: 22-16476 Complaint eFiling Fee	8.00
Total:	8.00
Cash	10.00
Total Payments:	10.00
Change Due:	2.00